

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION III

CACR07-139

January 16, 2008

JERRY W. PEREZ
APPELLANT

AN APPEAL FROM WASHINGTON
COUNTY CIRCUIT COURT
[CR2005-866-2]

V.

HON. KIM SMITH, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED; MOTION TO
WITHDRAW IS GRANTED

Appellant Jerry W. Perez pleaded guilty to robbery and theft of property in Washington County Circuit Court. After hearing evidence, a jury sentenced him to a total fifty-year term in the Arkansas Department of Correction. His attorney has filed a motion to withdraw as appellant's counsel. The motion was accompanied by a no-merit brief, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Ark. Sup. Ct. R. 4-3(j), wherein counsel contends that all rulings adverse to his client are abstracted and discussed. Appellant has filed no pro se points for reversal. We hold that an appeal would be wholly without merit. Accordingly, we affirm appellant's conviction and grant counsel's motion to withdraw.

The charges from this case stem from the April 12, 2005, robbery of the Fire Mountain restaurant in Fayetteville. Appellant was arrested and originally charged with aggravated robbery. However, appellant later pleaded guilty to simple robbery and theft of property. As part of the plea agreement, a jury was convened to set consecutive sentences

for both crimes.¹ After hearing evidence, the jury sentenced appellant as a habitual offender to thirty years' imprisonment on the robbery charge and twenty years' imprisonment on the theft of property charge.

An attorney's request to withdraw from appellate representation based upon a meritless appeal must be accompanied by a brief that contains a list of all rulings adverse to his client that were made on any objection, motion, or request made by either party. *Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001). The argument section of the brief must contain an explanation of why each adverse ruling is not a meritorious ground for reversal. *Id.* We are bound to perform a full examination of the proceedings as a whole to decide if an appeal would be wholly frivolous. *Campbell v. State*, 74 Ark. App. 277, 47 S.W.3d 915 (2001). If counsel fails to address all possible grounds for reversal, we can deny the motion to withdraw and order rebriefing. *Sweeney v. State*, 69 Ark. App. 7, 9 S.W.3d 529 (2000).

The record contains two adverse rulings. First, during voir dire, counsel challenged prospective juror Rimmer for cause. However, when the trial court noted that Rimmer stated that he could be impartial, counsel did not pursue the for-cause challenge. The court overruled counsel's objection, and counsel used a peremptory challenge to excuse Rimmer. As noted by counsel, appellant did not exhaust his peremptory challenges; therefore, had the trial court erred in refusing to excuse Rimmer, that error would have been harmless. *See Butler v. State*, 264 Ark. 243, 570 S.W.2d 272 (1978) (noting that a defendant cannot complain of the composition of the jury if he does not exhaust his peremptory challenges).

Second, during his testimony, appellant commented that his former attorney told him that the State offered him a twenty-year sentence in exchange for a plea of guilty on the

¹By pleading guilty to simple robbery, appellant avoided application of the "seventy-percent rule," which requires certain offenders to serve at least seventy percent of their sentence before being eligible for parole. *See* Ark. Code Ann. § 16-93-611 (Repl. 2006).

original aggravated-robbery charge. The State objected, and the court agreed that the testimony was inadmissible evidence of plea negotiation. As noted by counsel, appellant's testimony regarding previous plea negotiations was inadmissible under Ark. R. Evid. 408, which excludes evidence of settlement offers for the purpose of establishing liability for or the amount of a claim.

A review of the record reveals no other adverse rulings. Counsel has submitted a brief that complies with the requirements of *Anders* and Ark. Sup. Ct. R. 4-3(j). Accordingly, we affirm appellant's conviction and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

ROBBINS and MARSHALL, JJ., agree.